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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 30TH DAY OF JUNE 1998

Before

THE HON'BLE MR.JUSTICE HARI NATH TILHARI

WRIT PETITION No.31237/1997

Between:

1. Dhakalu Ningappa Patil,
major, r/o.Yamanapur,
Tq.& Dist.Belgaum.
2. Sri.Chandru Dhaklu Patil,
major, r/o.Yamanapur,
Tq. & Dist.Belgaum.
3. Sri.Monnappa Dhakalu Patil,
major, r/o.Yamanapur,
Tq.& Dist.Belgaum.
4. Sri.Gangaram Dhaklu Patil,
major, r/o.Yamanapur,
Tq.& Dist:Belgaum.
5. Sri.Parashuram Dhakalu Patil,
major, r/o.Yamanapur,
Tq.& Dist.Belgaum.
6. Sri.Ningappa Dhaklu Patil,
major, r/o.Yamanapur,
Tq.& Dist:Belgaum. .. PETITIONERS

(By Sri.M.B.Nargund, Adv.)

And:

1. The Divisional Commissioner,
Belgaum Division, Belgaum.
2. The Dy.Commissioner,
Belgaum.
3. The State of Karnataka,
rep. by its Secretary to Urban
& Housing Devp. Dept., MS.Bldg.,
Bangalore-1. .. RESPONDENTS

(By Sri.Halappa Herur, GP)

This Writ Petition under Article 226 of Constitution
is filed praying to quash vide Anx.A dt.31-7-92 and Anx.B
dt.23-5-1994 by R1 and 2.

This Writ Petition coming on for preliminary hearing
in 'B8 Group this day, the Court made following:-

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O R D E R

Heard the learned counsel for the petitioner Sri.M.B.Naragund.

2. By this petition under Article 226 and 227 of the Constitution, the petitioner has sought a writ of certiorary quashing the order dated 23-5-1994 passed by the Divisional Commissioner, Belgaum, in No.RB/ULC/AP.23/92-93 dismissing the petitioners' appeal and,affirming, the order passed by the competent authority/~~it~~ its order dated 31-7-1992,declaring 2611.30 sq.mts. of land to be excess land. It has been contended by the learned counsel for the petitioners that the error has been committed by the authority ~~by~~^{it} including the land on which building had existed as vacant land and that^{it} ~~the~~^{Said land has} wrongly been construed as vacant land. He further contended that there is land meant for agriculture and that should^{it} not~~be~~^{have} construed as excess land, and no proper enquiry has been made. Learned counsel ~~father~~^{it} contended that his two sons were majors and they were entitled to separate share ~~in~~^{it} the property.

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3. As regards the vacant land, section 2(q) defines it. It reads as under:-

"Vacant land means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include-

(i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated;

(ii) in an area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day with the approval of the appropriate authority and the land appurtenant to such building;

(iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building:

Provided that where any person ordinarily keeps his cattle, other

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than for the purpose of dairy farming or for the purpose of breeding of live-stock, on any land situated in a village within an urban agglomeration (described as a village in the revenue records), then, so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purposes of this clause."

A reading of this definition clause *per se* reveals that the expression "vacant land" is not to ^{be taken} mean and include any land which is mainly used for the agricultural purposes. It means if a person takes the plea that the land is an agricultural land and cannot be included in the vacant land, he has to allege and establish that ^{before} on the appointed day, the land has been mainly used for agricultural purposes. He has to allege ^{he does not} and prove it. In the writ petition, I find any allegation that it has been so made that on the appointed day that land was mainly used for agricultural purposes. A land

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mainly used for agricultural purposes may not be included. The Legislature has used an expression which has got significance i.e., expression "mainly used" which is very important. In the present case, I do not find any averment that it has been so asserted nor it has been so proved. What is stated is that the land has been reserved for agricultural purposes is not material. The person who is the owner of the land has to allege and prove that the land 'has been mainly used' for agricultural purposes and unless this allegation is made and the fact is established, the land will have to be considered as one and may be taken to be vacant land. Section further clarifies that land does not include an area where building regulations are not in operation, if the land is occupied by a building and the building is one which has been constructed before or is being constructed on the appointed day, then in that case, land covered by the building and the one appurtenant thereto,

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that land may not be considered as vacant land.
That where building Regulation are and have
been in operation in the area then ^{if}
land or area is occupied by a building
constructed before or on which building
is being constructed on the appointed day
with approval of appropriate authority ^{if then} such
land as is occupied by building and land appurtenant
thereto shall not taken to be as well as will
not be taken to ^{be if} included within the framework
of Expression 'Vacant Land' used in the Urban
Land Ceiling Regulation Act 1976. Again such
a plea had to be taken but has not been taken
that any building existed or ~~was~~ being made.
on the land and land was covered by the
building, the person claiming to be the
owner has to allege and to prove that the
building had been constructed either before
or was in the process of being constructed
on the appointed day and in cases where the
building regulations are in operation, it
has to be further alleged and proved that
construction was ^{if made or was being made if} with approval of competent

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authority. These facts have to be alleged and established to get exemption and get the land excluded from declaration as vacant land. The appointed day in the section has been defined in Section 2(a) as under:-

"(a) Appointed day means:-

(i) in relation to any State to which this Act applies in the first instance, the date of introduction of the Urban Land (Ceiling and Regulation) ~~and~~ Bill, 1976, in Parliament; and

(ii) in relation to any State which adopts this Act under clause (1) of Article 252 of the Constitution, the date of such adoption;

This Act, ^{as per} ~~definition~~ ^{of} "appointed day" did apply to the 11 States namely the State of Andhra Pradesh, Gujarat, Haryana, Himachal Pradesh, Karnataka,

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Maharashtra, Orissa, Punjab, Tripura, Uttar Pradesh, West Bengal and all the Union territories and the date when the Bill was introduced was ^{in Parliament} on January 28, 1976 ~~in the~~ ~~Parliament~~. So it has to be alleged and established that the building covered the land or existed on the land had been constructed before or was in the process of construction and its construction was going on 28-1-1976. If a person has not alleged and proved this fact, then in that case that land, even if it is covered by the building, may be included within the framework of the expression "vacant land". But if the building existed on the appointed day i.e., on 28-1-1976 or was being constructed or in the process of construction on the appointed day, then no doubt the land covered by the building will not be included within the framework of expression "appointed day". In the petition, it has not been so made out ~~that~~ ^{that} this had been asserted by the petitioner. No such argument has been advanced before the Appellate Authority. Learned counsel contended that there was no proper enquiry.

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I am not able to accept it. Enquiry are
required to ^{be} ^{if relevant and} made when ~~relevant and~~ material
facts have been asserted and point requires
determination but no such facts were asserted
and had been pointed out by the petitioner,
the question did not arise to be enquired and
determined. There is no such thing in the
petition that such pleas with the necessary
avermment of facts was taken. That further
contention that has been raised that the
sons were all major, this contention has
been considered by the authority. The
Appellate Authority observes that the
declaration of the first applicant shows that
his sons were all minor on the appointed day.
When his all sons were minors the appointed day
as per own declaration, ^{if all of them} were not majors. In
this view of factual position, this last
submission of petitioners' Counsel fails.

Thus considered, in my opinion, this
petition is devoid of force. It is hereby
dismissed.

Sd/-
JUDGE

bss/-

bnv/-

